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No. 426

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, *Appellant*

v.

CLARENCE E. HOOD, JR., ET AL., HOY F. BRASHIER AND JAMES H. WILKINSON

On Appeal from the United States District Court for the Southern District of Mississippi

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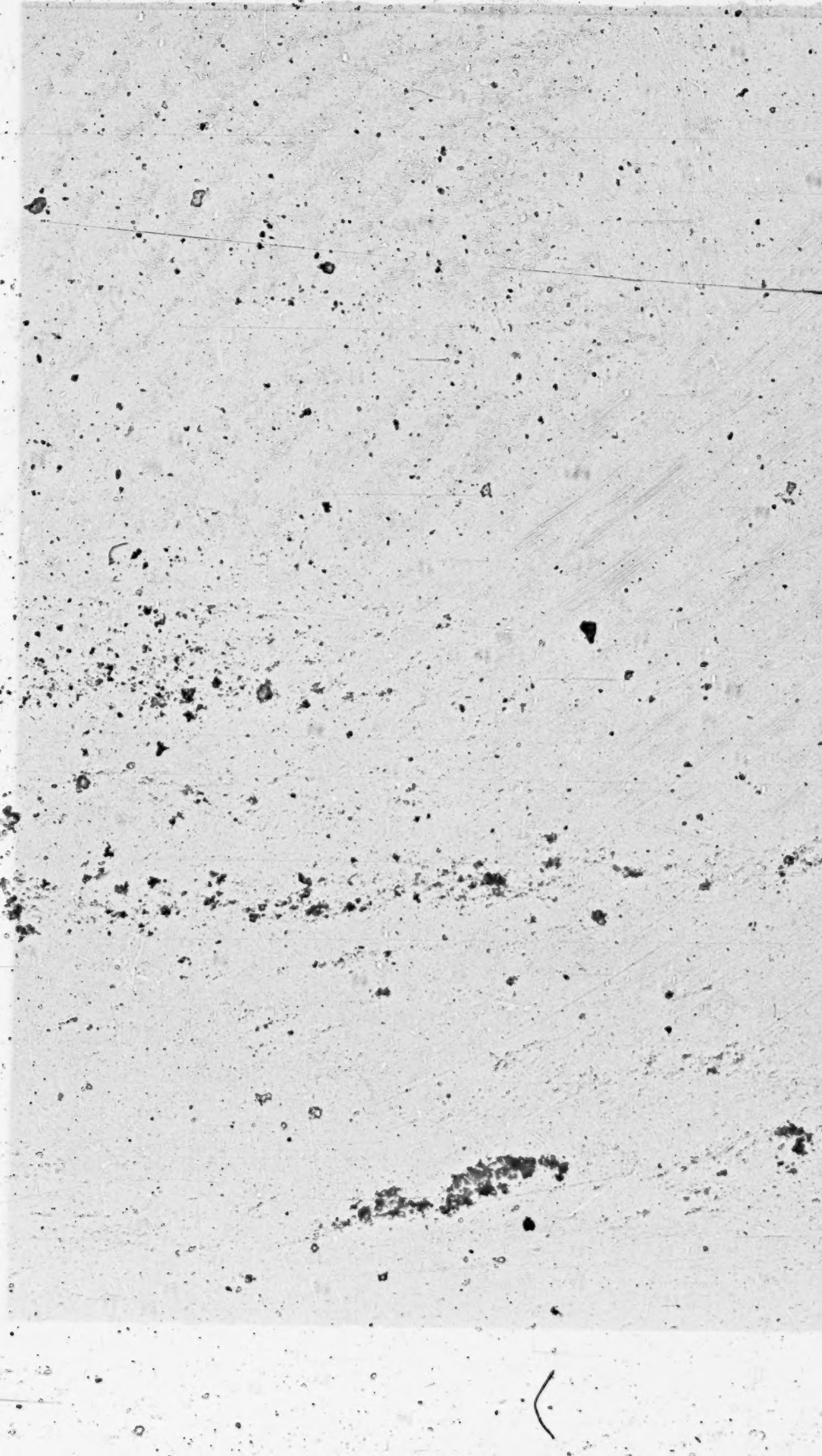
BRIEF FOR THE UNITED STATES



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OPINION BELOW

The District Court did not write an opinion. The court's order dismissing counts 31, 32, and 33 of the indictment (R. 14-15) is not reported.

JURISDICTION

The order of the District Court dismissing counts 31, 32, and 33 of the indictment was entered on September 6, 1951 (R. 14-15). The United States filed its notice of appeal on October 4, 1951 (R. 15), and this Court noted probable jurisdic-

tion on December 3, 1951 (R. 21). The jurisdiction of this Court is conferred by the Criminal Appeals Act, 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

18 U.S.C. 215 makes it unlawful to solicit political contributions in consideration of the promise of support or use of influence in obtaining for any person "any appointive office or place under the United States." The question is whether it is a good defense to a prosecution under this statute that at the time of the alleged solicitation the promised federal job, although it could be created under authority of existing law, did not actually exist.

STATUTES INVOLVED

18 U.S.C. 215 (62 Stat. 694) provides:

> Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

As originally enacted as the Act of December 11, 1926, c. 3, Section 2, 44 Stat. 918, 18 U.S.C. (1946 ed.) 150, the statute provided:

It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.*

STATEMENT

On July 19, 1951, an indictment containing 34 counts was returned against twelve defendants, including appellees Roy F. Brashier and James H. Wilkinson, in the United States District Court for the Southern District of Mississippi. Count 1 charged all the defendants with a conspiracy to violate 18 U.S.C. 215, by selling, on behalf of the Mississippi Democratic Committee, appointments to offices in the Post Office Department and the Office of Price Stabilization (R. 1-8). The remainder of the counts charged the defendants individually with the commission of specific substantive offenses. Counts 31 and 32 charged that appellee Brashier had committed two such sub-

* Section 1 of the 1926 Act, the substance of which is now codified in 18 U. S. C. 214, provided "That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever."

stantive offenses, and count 33 charged that Wilkinson committed one such offense, in that each "did knowingly, wilfully, and unlawfully solicit from" different named individuals stated sums of money "in consideration of the defendant's promise of support and use of influence in obtaining for" the named individuals "an appointment as Chairman of the County Ration Board to be set up and created under the Office of Price Stabilization in" certain specified counties in Mississippi (R. 8-9).[1]

Following motions to dismiss by the appellees (R. 9-14), the trial court, "taking judicial notice that no office or place of Chairman of the County Ration Board under the Office of Price Stabilization for the District of Mississippi had been created or was in existence during the period of time covered by the indictment", ordered "the indictment dismissed as to the defendant Roy F.

[1] The indictment was the result of an investigation conducted by a subcommittee of the Senate Committee on Expenditures in the Executive Departments. See S. Rep. No. 445, 82nd Cong., 1st sess.

[2] It was stipulated by counsel for both sides that "no office or place under the United States known as Supervisor or Chairman of a County Rationing Board under Office of Price Stabilization for the District of Mississippi either in February 1951 and up to and including the date of the return of the indictment herein has been established, set up, or designated in the State of Mississippi, nor has any such office, place or position on a county level been established, set up or designated in the State of Mississippi during either the month of February, 1951 and up to and including the date of the return of the indictment herein." (R. 14).

Brashier on Counts 31 and 32, and * * * as to defendant James H. Wilkinson on Count 33 of said indictment". All portions of count 1 (the conspiracy count) dealing with offices or places as Chairman or Supervisor of County Ration Boards under the Office of Price Stabilization and the overt acts alleged dealing with such offices or places were ordered stricken as surplusage. (R. 14-15.)

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that 18 U.S.C. 215 applies only to presently existing appointive offices and not to the sale of potential federal offices authorized by law but not yet actually created, such as the office of Chairman of the County Ration Board under the Office of Price Stabilization, for the District of Mississippi, involved in this case.

2. In dismissing counts 31, 32 and 33 of the indictment.[3]

[3] The Government's notice of appeal inadvertently stated that the appeal is from the order of the District Court "dismissing the indictment" (R. 15). This appeal under the Criminal Appeals Act, 18 U.S.C. 3731, does not bring up for review, except indirectly, the District Court's action in respect of the conspiracy count, for the Court did not dismiss that count, but only struck certain of its allegations as surplusage. The other substantive counts which were not dismissed and the individual defendants named therein are also not before the Court. The named appellees other than Brashier and Wilkinson have, therefore, only a nominal participation in this appeal, which is limited to the correctness of the District

SUMMARY OF ARGUMENT

I

The alleged solicitation of political contributions by appellees in return for promises to obtain for the contributors appointments to federal positions under the Office of Price Stabilization directly violated 18 U.S.C. 215. The District Court's ruling that the statute applies only where the specific jobs sold are actually in existence is an unjustifiably narrow construction which finds no support in the legislative history, language, or purpose of the statute.

The original act was passed in 1926 to prevent the sale of federal patronage by political bosses who were not answerable to the people, an evil which Congress found threatened the prestige of Government. The activities with which appellees are charged tend to destroy the confidence of the people in their Government, and are in no way less destructive of public confidence because the particular federal positions attempted to be sold turn out to be non-existent. The legislative history of the statute makes it apparent that the solicitations here involved are the very type which Congress intended to proscribe.

Court's construction of 18 U.S.C. 215 as inapplicable to the sale of potential federal offices authorized by law but not yet actually created. "The Government's appeal does not open the whole case." *United States* v. *Borden Co.*, 308 U. S. 188, 193.

Both the language and history of the statute show that the essence of the offense is the *solicitation*, the sale or attempted sale of political influence, for jobs to be filled in the future. The crime is complete when the solicitation is made, even though the solicitee never obtains the promised office, and even though the office is in fact either not vacant or non-existent. So far the evils at which the statute is aimed are concerned, there is no difference between trafficking in an existing job which is not yet vacant—to which the statute unquestionably applies—and a contemplated job which has not yet been created. The seller of federal patronage should not be allowed to plead as a defense that he is innocent because he could not in fact deliver what he purported to sell.

When this Court held in *United States* v. *Barnow*, 239 U.S. 74, that 18 U.S.C. 912, punishing false personation of a federal officer, is violated even though the pretended position is not in existence, it reasoned that the integrity of the federal Government is equally harmed by pretense to existent or non-existent office. The same reasoning is applicable here. The integrity of the federal Government is injured by the sale of political influence to secure what the defendant describes as a federal appointive position, whether or not such a position actually exists. It is the trafficking in federal patronage, whether the jobs are or are not yet actually available, which Congress made a crime.

II

Assuming that under 18 U.S.C. 215 the federal position sold must have some actuality, it is submitted that, in the circumstances of this case, the statute applies. Appellees sought to barter a federal office similar to the one which had been in existence in Mississippi only a few years previously. Recent federal emergency legislation, and executive orders issued thereunder, regarded in the light of the history of the World War II experience, made it a substantial possibility when the acts here involved occurred, that a rationing system would be set up in the near future under the Office of Price Stabilization. The sale of an office which undoubtedly appeared to all parties to be so imminent was the sale of a federal office within the purview of 18 U.S.C. 215.

ARGUMENT

I

18 U.S.C. 215 Does Not Require That the Appointive Office or Place be in Existence at the Time It Is Promised in Return for the Payment of Political Contributions

The District Court ruled that 18 U.S.C. 215 did not contemplate the sale of appointive offices not presently in existence. This narrow construction, which is not supported by any previous decisions construing the statute, substantially defeats one of the principal purposes behind its enactment—the protection of the integrity and prestige of the federal Government. The language and the legislative history of the statute leading up to its pas-

sage in 1926 make it clear that Congress was aroused over the wholesale corruption in federal patronage in some states, and that the statute was primarily directed at solicitations—the sale or attempted sale of federal jobs—without regard to whether the jobs bartered were actually obtained or whether they in fact were vacant or actually existed.

The language of the statute bears this out. The essential criminal act is the "promise of support or use of influence in obtaining for any person any appointive office or place under the United States." The statute does not make it necessary for the accused to obtain appointment for the bidder—he need only *promise* to do so. The offense is a present promise of future assistance, in obtaining a federal job in the future. There is thus no reason to believe that the statute is concerned merely with offices existing or vacant at the time of the promise. Congress deliberately phrased the statute to take care of the evil with which it was principally concerned—the *sale of influence*. The crime is complete when, as here, there is a solicitation of money in consideration for a promise of support or influence in obtaining a federal job in the future, regardless whether there is in fact an existing vacancy to be filled or whether the "purchaser" actually takes office or whether there is an actual job in existence which could be sold. So far as the crime defined by Congress is concerned, there is no difference between an existing job which is

not yet vacant—as to which the statute unquestionably applies—and a contemplated job which has not yet been created. In neither situation should the seller be allowed to plead as a defense that he could not make good on his promise because the position "sold" did not in fact exist.

The situation in 1926 which caused Congress to enact the statute now codified as 18 U.S.C. 215 was almost identical with the situation which spurred the investigation [4] culminating in the pres-

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[4] The Senate subcommittee (see footnote 1, *supra*) reported (S. Rep. No. 445, 82nd Cong., 1st sess.) that, after the appearance of the States Rights group in the 1948 election, the Democratic National Committee stopped conferring with the Mississippi congressional delegation on patronage matters (pp. 1-2). Instead, a self-appointed Mississippi Democratic Committee, which had not been legally organized in accordance with the provisions of the Mississippi election laws, designated one of its leaders, Clarence E. Hood, Jr., as chief patronage adviser in the State of Mississippi.

During the latter part of 1950, when the Office of Price Stabilization was organized, see pp. 20-25, *infra*, and a State director appointed for Mississippi, the Mississippi Democratic Committee, assuming that a system of rationing would be set up as in World War II, hired defendants Brashier, on a full-time basis, and Wilkinson, on part-time, to enter into agreements with certain persons whereby these persons, for the payment of a political contribution, would be appointed contact men for the Democratic Party in various counties throughout the State (pp. 25, 27). Although these contact men would serve without pay, they would be in a position to give federal jobs to persons of their own choice (p. 26). On the basis of testimony before it, the subcommittee concluded that these so-called "contact men" were promised that they would be appointed to or would control the appointment of county positions in the Office of Price Stabilization (p. 30).

ent prosecution. Then, as allegedly in this case, a few political bosses had been given control by a national political organization over the disposition of federal jobs. As a result, Congress enacted the statute here involved, making the sale of federal offices unlawful. The problem existing then was that of persons, authorized by the political organization to dispose of patronage in federal positions, selling this patronage to the highest bidder. This is the very same situation here. The harm to the integrity of the Government is not affected by the existence or non-existence of the jobs which are sold, but is brought about primarily by the practice of bartering in federal jobs, whether such jobs are actually vacant or existent. Thus, Congressman Busby in bringing to the attention of the House the situation in Mississippi which permitted a local political boss to control all federal patronage and sell it to the highest bidder, stated as follows (67 Cong. Rec. 5847):

> In my particular state — Mississippi — so corrupt, open, and notorious has been the practice of barter and sale of Federal positions from the humblest place of postmaster or rural letter carrier to the most important appointive Federal positions in the State, that self-respecting, decent citizens shudder to think of the humiliation into which the State has been dragged by those who would debauch the reputation of their country and sell its

good name in order that they might be personally enriched by the sale of Federal patronage.

The Report of the Judiciary Committee makes it clear that these considerations caused it to recommend passage of the bill. The Report (H. Rep. 1366, 69th Cong., 1st Sess.) states:

> This bill seeks to punish the purchase and sale of public offices. Certain Members of Congress have brought to the attention of the House both by speeches on the floor and statements before the Judiciary Committee a grave situation, disclosing corruption in connection with postal appointments in Mississippi and South Carolina. It is believed that this bill will prevent corrupt practices in connection with patronage appointments in the future.

It is important to note that the House report speaks only of corruption in patronage appointments, and makes no mention of the existence or non-existence of the jobs. While the statute also has the effect of preventing incompetent office holders from actually succeeding in buying and holding positions under the bidding system, this was not the main purpose of the bill. The history of the statute and the declared policy of Congress make it clear that the main purpose was to end once and for all the sales of *patronage*—which of

course includes not only present jobs expected to be vacated but future jobs not yet created—which brought disrepute to the Federal Government.

In 1926, at the very same time that Congress was considering the predecessor of the present statute, it had before it a bill (H.R. 10770) introduced about the same time (67 Cong. Rec. 6483):

> to make unlawful the acceptance or solicitation of campaign or political funds, under certain circumstances, the acceptance of pay for political help, *the acceptance of certain Federal positions secured by parties after making such payments or donations, and for other purposes.* [Emphasis added.]

That the predecessor of the present statute was passed in preference to this bill is further evidence that it was the sale of influence, rather than actual filling of the position, that constituted the primary evil against which the statute was directed.

If the statute is construed as entirely inapplicable to the sale of federal jobs which have not yet been created, there will be a large area in which the legislative purpose will be frustrated, for very frequently federal offices are created and filled simultaneously. If the appellees had promised "For $500 we will, in the event that X position becomes vacant, use our influence to get it for you", no one could doubt that the statute had been violated. In what way does that case differ from a

promise: "For $500, we will, in the event that X position is created, use our influence to get it for you"? In either event there is a trafficking in positions expected to become available in the future. Indeed the second type of promise probably represents the more serious threat to the integrity and prestige of the Government. The greatest opportunities for both job-hunters and dispensers of patronage are those offered by new positions, which are often created in substantial numbers and whose creation can to some extent be anticipated and predicted, rather than by vacancies in existing positions, which typically arise singly and often cannot be anticipated. Moreover, the recipient of a new position is frequently chosen before the position has been created, so that he may enter in office immediately on its creation.

The statute would thus fail to meet a major part of the evil at which it is directed if it were limited to promises of existing positions. The anomaly of such a limitation is emphasized by the fact that the nature of the particular position sold is normally not of primary importance to either the seller or the purchaser. If a particular position should prove unavailable, the promissor would normally be expected and would normally be obliged to use his influence to obtain for the payee some other equivalent position.[5] The evil from the

[5] S. Report No. 445, supra, indicates that those who contributed money to appellees were not primarily inter-

sale of patronage would remain. That evil arises wherever federal appointive positions—whether presently available or expected to become available—are treated as articles of commerce.

Statutes, even though criminal, which are designed to accomplish a broad social objective, are to be construed in a manner which will accord with their basic purpose. *United States* v. *Dotterweich*, 320 U.S. 277, 280; *United States* v. *Lacher*, 134 U.S. 624, 628. "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean." *Roschen* v. *Ward*, 279 U.S. 337, 339.

In *Hoeppel* v. *United States*, 85 F. 2d 237 (C.A.

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ested in the job of chairman of the county ration board, but had been induced to enter the agreement by the promise of appellees that they would be given a position which would enable them, in turn, to give federal jobs to their friends. The Report stated (p. 27):

"* * * Mr. Harvey said that he was in no way interested in the rejuvenation of the Democratic Party in Mississippi and that he was not interested in making a contribution to the Democratic Party or to any other party in the amount of $300. But, when he was advised by Mr. Brashier that certain patronage would be his, he became interested in several friends who would like to have jobs, *and for this reason he went along with the idea as outlined by Mr. Brashier* and made out his check in the sum of $300 payable to the Mississippi Democratic Committee. Stories similar to that of Mr. Harvey were testified to before the subcommittee by Mr. T. B. Wilkins, Mr. A. F. Pylant, and Mr. Philip H. Brasfield." (Emphasis added.)

D.C.), certiorari denied, 299 U.S. 557, the defendants sought to read into this statute the word "civil" before the words "appointive office" in an effort to prevent its application to the sale of an appointment to the Corps of Cadets at West Point. The Court of Appeals of the District of Columbia held that this could not be done. It said, at p. 241, "It is broad and sweeping in its terms, applying to all appointive offices, without qualification." In like manner, appellees in the instant case seek to read into the statute the qualifying words "presently existing" before the words "appointive office." They should be no more permitted to restrict the scope of the statute than were the defendants in the *Hoeppel* case.

That the present statute is to be given a broad construction to accomplish its underlying policy has been declared by the revisers of the Criminal Code in modifying the language of the original provision (*supra*, p. 3) for its enactment as Section 215 of Title 18. In explaining the addition of the words "or place" to Section 215, the reviser stated: "Term 'or place' was inserted after words 'appointive office' in order to give broader scope to the section." Reviser's Note following 18 U.S.C. 215.

In 1926, when Congress passed the predecessor of the instant statute, this Court had already construed a very similar statute, now 18 U.S.C. 912, which provides for the punishment of personation

of a public officer,[6] without specifying whether the pretended office must actually exist or not. In *United States* v. *Barnow*, 239 U.S. 74, it was held that the statute was violated even though the type of office or employment to which the defendant pretended did not exist. In light of this holding and the underlying purpose of Section 215, Congress could well have believed itself secure in adopting similarly unqualified language in the present statute.

The reasoning adopted by the Court in the *Barnow* case is equally applicable here. There the defendant had represented himself as being employed by the Government to sell a book entitled "Messages and Papers of Presidents". In fact no such employment or activity on the part of the Government existed. As in the present case, the District Court in the *Barnow* case dismissed the indictment, ruling that the statute there involved contemplated only a type of employment that was in existence in the Government. This Court, on a direct appeal brought by the Government, reversed the District Court, saying at pp. 76-77:

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[6] 18 U.S.C. 912 reads as follows:

> "Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined not more than $1000 or imprisoned not more than three years, or both."

> We think this is to read the act in too narrow a sense. Not doubting that a false personation of a particular office or employé of the Government, or a false pretense of holding an office or employment that actually exists in the Government of the United States, is within the denunciation of § 32, we think it has a broader reach. * * * *Why should it be deemed less an offense where the assumption or pretense is entirely false, as where the very office or employment to which the accused pretends title has no legal or actual existence?* (Emphasis added.)[7]

In upholding the validity of Congress' prohibition against pretense to non-existing government offices, this Court said at p. 78:

> In order that the vast and complicated operations of the Government of the United States shall be carried on successfully and with a minimum of friction and obstruction, it is important—or, at least, Congress reasonably might so consider it—not only that the authority of the governmental officers and employees be respected in particular cases, but that a spirit of respect and good-will for the Government and its officers shall generally prevail. And what could more directly

[7] Accord: *Elliott* v. *Hudspeth*, 110 F. 2d 389 (C.A. 10); *Brafford* v. *United States*, 259 Fed. 511 (C.A. 6).

impair this spirit than to permit unauthorized and unscrupulous persons to go about the country falsely assuming, for fraudulent purposes, to be entitled to the respect and credit due to an officer of the Government? It is the false pretense of Federal authority that is the mischief to be cured * * *. *Now, the mischief is much the same, and the power of Congress to prevent it is quite the same, whether the pretender names an existing or a non-existing office* * * *. [Emphasis added.]

This language aptly applies to the issues here involved. The sale of public office has an even more destructive effect on the Government, and is even more contemptible in the eyes of the public, than false pretense to public office. It should not be any less an offense that the sale is of a public office that is not presently in existence, for, like the statute involved in the *Barnow* case, the statute here has for one of its principal purposes the maintenance of the general good repute and integrity of the federal service itself. Cf. *United States* v. *Ferger*, 250 U.S. 199, 203. The danger to that good repute and dignity is particularly great in the sale of federal patronage by politicians. As the Senate report stated of the situation giving rise to the instant prosecution, S. Rep. 445, *supra*, p. 31:

> * * * Whenever the heads of any political party or administration delegate political

power, as was done in this case, to persons who are not answerable to the voters or who are not responsible even to the membership of their own political party, such action leads to the corruption of public affairs.

The sale of patronage is the evil at which the statute was directed. That evil exists whether the office sold is or is not in existence.

II

Appellees' Activities Sufficiently Related to Potentially Existing Federal Offices to Constitute a Violation of 18 U.S.C. 215

Assuming that under 18 U.S.C. 215 the federal position sold must have some actuality, a promise to use influence to obtain for the payee a federal position which, although not yet in existence, is reasonably expected to be created in the near future clearly falls within the statute. That is the situation presented by the instant indictment. The position which was the subject of the solicitation of political contributions in this case was not a wholly fictitious creation; it had sufficient reality to bring it within even a narrow construction of the statute.

On February 8, 1951, when appellees allegedly promised to obtain appointments for contributors as Chairmen of County Ration Boards under the Office of Price Stabilization, there was reason for the parties concerned to believe that such positions might be available in the near future. Con-

gress had already passed the Defense Production Act of 1950, 64 Stat. 798, 50 U.S.C. App., Supp. IV, 2061, stating in the title of the Act that it was designed:

> To establish a system of priorities and allocations for materials and facilities, authorize the requisitioning thereof, provide financial assistance for expansion of productive capacity and supply, provide for price and wage stabilization, provide for the settlement of labor disputes, strengthen controls over credit, and by these measures facilitate the production of goods and services necessary for the national security, and for other purposes.

Section 101 of Title I of the Act specifically provides that the President is authorized "(2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense." Section 403 of the Defense Production Act of 1950 further provides:

> At such time as the President determines that it is necessary to impose price and wage controls generally over a substantial portion of the national economy, he shall administer such controls, *and rationing at the retail level of consumer goods* for household and personal use under authority of Title I of this Act (when and to the extent that he exercises

such authority), through a new independent agency created for such purpose. * * * [Emphasis added.]

Pursuant to this grant of authority, the President on September 9, 1950, issued Executive Order No. 10161, 15 Fed. Reg. 6105. Section 401(a) created a new and independent agency to be known as the Economic Stabilization Agency with an Administrator at its head. Section 401(b) provided: "The Administrator shall seek to preserve and maintain the stabilization of the economy. To this end he shall: (1) Plan and develop both short and long-range price and wage stabilization policies and measures and create the necessary organization for their administration * * *". Section 402 of the Order provided that there shall be in the Economic Stabilization Agency a Director of Price Stabilization "who shall perform such functions with respect to price stabilization as may be determined by the Administrator."

It was under almost substantially similar provisions of law that a system of rationing was set up in World War II. With the Office of Price Stabilization already functioning in the beginning of 1951 and a District Office set up in Jackson, Mississippi (see 16 Fed. Reg. 987) the parallel to the World War II situation was becoming clear, particularly since during that war the rationing system was operated under a similar agency—the Office of Price Administration. In short, the en-

abling legislation to set up rationing existed at the time appellees promised the federal ration jobs, and all that was needed then, as well as today, was a determination by the responsible authorities that rationing was needed for the national defense. That this determination was not remote is indicated by the statements of Director of Price Stabilization DiSalle in the General Ceiling Price Regulation issued on January 26, 1951, p. 2 (16 Fed. Reg. 808, 810):

> Price control not only must be backed by strong fiscal and credit measures but it is equally important that it be integrated with a vigorous use of production and distribution controls. It must be clearly understood that, even if price control does a perfect job in holding the prices of individual commodities, it is powerless to ensure that the essential commodities will be produced in the right quantities. With the imposition of price controls to halt the inflationary spiral, we shall be freezing a price structure geared to relatively normal patttterns of output. Such a price structure cannot be expected to bring about the pattern of output appropriate to an advanced defense economy. Nor can price controls alone be generally administered to achieve these necessary changes in output. When we refuse to allow goods to be distributed among buyers through the wild scramble of competitive bidding in inflationary markets, we must substitute orderly means

to determine whose wants shall be met and in what amount.

We have a growing system of production and distribution controls designed to assure that defense needs shall be met. We have already begun to extend these controls to assure the production of essential civilian goods and, where necessary, their fair distribution. The experience of World War II is eloquent testimony to the need for expanding such controls. * * *

There was then, therefore, substantial basis for an expectation that a system of rationing would be set up by methods similar to those adopted in World War II.[8] The sale of positions, the actuality of which must have seemed to all parties so

[8] Anticipation that rationing boards might be established in the near future was also indicated by informal statements made by high government officials. In its report of an interview with Eric A. Johnston, Economic Stabilization Administrator, the New York Times, January 27, 1951, p. 1, column 7, stated:

"Asked if rationing would have to be imposed, Mr. Johnston replied:

'That depends. We don't know yet. We may. I am not sure as yet.'"

Similarly, the New York Times, on January 19, 1951, p. 1, column 5, quoted Charles E. Wilson, Director of the Office of Defense Mobilization, as having testified before the Senate Small Business Committee that "Consumer rationing would not be necessary 'in the near future.' 'If we produce sufficiently we may put it off indefinitely, but I wouldn't want to guarantee that', he added."

imminent, was, we submit the sale of federal office within the language and intent of 18 U.S.C. 215.

CONCLUSION

For the reasons set out above, it is respectfully submitted that the order of the District Court dismissing counts 31, 32 and 33 of the indictment should be reversed.

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